

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 772 of 1993****For Approval and Signature:****HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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V.K. PARMAR - Appellant**Versus****DINESH ISHWARBHAI BHATT & 1 - Respondents**

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Appearance :

MRS VASAVDATTA BHATT for Appellant: 1,
MR MR VYAS FOR MR PN BAVISHI for Respondent : 1,
MR MA PATEL ADDL PUBLIC PROSECUTOR for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**Date : 18/01/2007****ORAL JUDGMENT**

1.The Assistant Registrar of Companies - the
appellant has preferred this appeal under
Section 378 of the Code of Criminal Procedure,

1973 (hereinafter referred to as 'the Code' for short) challenging the order of acquittal dated 22.10.1991 passed by the Additional Chief Metropolitan Magistrate, Ahmedabad in Criminal Case No. 32 of 1986 acquitting the present respondent No. 1 original accused of the charge committing an offence punishable under Section 210(4) and (5) of the Companies Act, 1956 (hereinafter referred to as 'the Act' for short).

2. This Court (Coram: N.J.Pandya, J.) granted leave and admitted the appeal vide order dated 21.7.1993.
3. Heard learned counsel for the respective parties.
4. Brief facts leading to filing this appeal deserve to be set out as under.
5. The Registrar of Companies filed a complaint before the Chief Metropolitan Magistrate at Ahmedabad being Criminal Case No. 32 of 1986 on 22.7.1986 against two persons namely Shri Dinesh Ishwarbhai Bhatt, the accused No. 1 and Shri Vrajlal Laxmidas Ladani, the accused No. 2 under Sub-section (5) and (4) of Section 210 of the Act for not preparing the balancesheet and Profit & Loss Account as required under Sub-section (4) of Section 210 of the Act. The accused No. 2 admitted his offence and therefore, he was ordered to be fine of Rs.50/- and in default thereof, to undergo SI for the period of 15 days vide order dated 9.2.1988.

6. The accused No. 1 – present respondent No. 1 denied the charge and claimed to be tried. After recording the evidences, the trial Court came to to the conclusion that the prosecution could not established guilty on the part of the accused – present respondent No. 1 so as to punish him under Section 210(4) and (5) of the Act and therefore, acquitted the accused No. 1 present respondent No. 1 vide order dated 22.10.1991. The said acquittal order is impugned in the present acquittal appeal under Section 378 of the Code.
7. Ms. Bhatt, learned counsel for the appellant has submitted that the order of acquittal being erroneous and contrary to the evidence on record, the same deserves to be quashed and set aside and as the offence on the part of accused No. 1 – present respondent No. 1 is proved beyond doubt, he shall be inflected with appropriate punishment for violating the provisions of Section 210 of the Act. Ms. Bhatt has invited this Court's attention to the testimony of the complainant to show that the Company was registered on 25.2.1982 and as per the provisions of Section 210, it was required to produce its balancesheet and Profit & Loss Account latest by 25.5.1983 and in fact, the company has produced the same only on 30.6.1983 and therefore, the offence is committed, which deserves to be punished under Section 210 of the

Act.

8. Mr. Vyas for Mr. Bavishi appearing for the respondent No. 1 - original accused No. 1 has invited this Court's attention to Ex.43 to show that in fact, the accused resigned from the Company on account of irregularities in the Company with effect from 25.8.1983. He also invited this Court's attention to Ex. 47 at page 173 in the paper-book, which appeared to be a letter dated 6.8.1985 addressed to accused by the Registrar of Companies indicating him in unequivocal terms that there was no limitation as the Company was incorporated on 25.2.1982 and its first Annual General Meeting to be held on 24.8.1983. The Registrar of Companies has also received intimation that the First Annual General Meeting was held on 24.8.1983 but the same was adjourned to 25.8.1983. The Company has also submitted xerox copy of the minutes of the meeting held on 24.8.1983. The First Annual General Meeting of the Company was thus held within 18 months from the date of its incorporation as per the provisions of Section 166 of the Act. It was also intimated by the accused to the Company as per Ex. 47 that the balancesheet of the Company were laid before the meeting held of 24.8.1983 but the same was approved on the adjourned date i.e. on 25.8.1983 and therefore, the provisions of Section 210 of the Act were also not violated. In view of this,

Shri Vyas has submitted that this letter, which is duly exhibited at Ex. 47, the Registrar was not entitled to lodge complaint ignoring the same. It is not the case of the complainant that this letter was unauthorized and/or was written in ignorance of the fact on record. Therefore, Shri Vyas submits that the Appeal deserves to be dismissed.

9. This Court has heard the learned counsel at length and perused the records and proceedings. It deserves to be noted that Ex. 47 is a letter addressed by the Registrar of Companies, on whose behalf the complaint is filed. The complainant has not tried to explain away the contents of the letter in his testimony. The complainant has not led any evidence to show that either the letter was unauthorized or contrary to evidence on record. The letter has been duly proved and exhibited on record and on the fact of which, the judgment and order of acquittal cannot be said to be unreasonable and/or erroneous. It also deserves to be noted that so called irregularities appear to have occurred way back in the year 1983 and the factum of the accused being not seen eye to eye with other Directors, have also been brought on record. Against these backdrop, the accused's responsibility for producing the balancesheet and he is being expose to the criminal liability deserve to be viewed. The prosecution was required to prove beyond doubt that the

accused was responsible and was guilty for violation of the provisions of Section 210 of the Act. In absence of any such cogent evidence on record that accused had willfully and intentionally not complied with provisions of Section 210 of the Act, no criminal liability could be fastioned upon the accused. In view of this the order of acquittal could not be said to have resulted into miscarriage of justice so as to reverse the same in the proceedings under Section 378 of the Code.

10. This Court is mindful that under Section 378 of the Code, the order of acquittal ordinarily is not to be reversed unless and until it is aptly demonstrated by the appellant that sustaining of the order of acquittal would result into miscarriage of justice. In the instant case, no such plea is raised and therefore, even on this count also as it appears from the record, the order of acquittal dated 22.10.1991 passed by the Additional Chief Metropolitan Magistrate in Criminal Case No. 32 of 1986 does not call for any interference and therefore, appeal deserves to be dismissed and is dismissed accordingly.

(S.R.BRAHMBHATT, J.)

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